American Eurocopter Corporation, B-283700, December 16, 1999

Decision

Matter of: American Eurocopter Corporation

File: B-283700

Date: December 16, 1999

Daniel R. Hagler, Esq., for the protester.

Catherine E. Pollack, Esq., and John W. Chierichella, Esq., Fried, Frank, Harris, Shriver and Jacobson, for Bell Helicopter Textron, an intervenor.

John D. Bremer, Esq., Joseph A. Lenhard, Esq., and Gena E. Cadieux, Esq., Department of Energy, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a procurement issued under simplified acquisition procedures, restriction of competition to a specific make and model of helicopter is reasonable, where that helicopter uses specialized equipment that cannot be used with protester's helicopter and where, given the nature of the agency's flight mission and its organization, standardization of the agency's fleet is necessary for safety reasons.

DECISION

American Eurocopter Corporation (AEC) protests the restriction of request for quotations (RFQ) No. DE-RQ-65-99-WA-12296, issued by the Western Area Power Administration (WAPA), for a Bell Helicopter Model 407. AEC contends that restricting the competition to a brand name is unreasonable because AEC's helicopter will meet all the agency's needs.

We deny the protest.

WAPA, a part of the Department of Energy, markets hydroelectric power and related services throughout 15 western states. [1] To this end, WAPA maintains almost 17,000 miles of high voltage transmission lines and 358 microwave communication sites. Agency Report at 1. In performing these duties, WAPA uses helicopters for the inspection of lines and other maintenance services. Agency's Post-Hearing Comments at 6. The maintenance work includes the placement of transmission line marker balls on a narrow static line; this requires the use of a specialized device that is suspended below the helicopter and requires the helicopter pilot to hover only 30 feet above high-voltage power lines. Much of WAPA's flight time is in remote locations, over difficult terrain, at high altitudes, and in extreme climates, which affect

helicopter performance. Hearing Videotape (VT) at 9:47. [2] For example, WAPA operates helicopters during winters in the mountains of Colorado and summers in the desert of New Mexico.

WAPA currently has a fleet of four helicopters, consisting of two Bell Helicopter model 206 Jet Rangers and two Bell Helicopter model 206 Long Rangers and a staff of five pilots. [3] VT at 9:42-43, 9:45. As a result of a 1997 efficiency study, WAPA determined that it requires only three helicopters and four pilots to perform its mission. [4] Agency Report, Tab 1, Determination and Finding under Title II of the Federal Property and Administrative Services Act, at 1; VT at 9:37, 12:45-46. The agency decided to trade in the two Jet Rangers and purchase a Bell Helicopter model 407, which is an updated version of the Bell Helicopter model 206. [5] This would result in WAPA having a fleet of three Bell Helicopters. VT at 9:45.

WAPA decided to procure the Bell Helicopter model 407 under the authority of the test program procedures of Federal Acquisition Regulation (FAR) subpart 13.5, which authorizes the use of simplified procedures for the acquisition of commercial items valued up to $5 million. Market research was performed to determine vendors' interest in providing the helicopter, and eight vendors expressed interest in supplying this aircraft. Agency Report at 2. A justification for other than full and open competition was prepared to restrict the procurement to this specific make and model. Agency Report, Tab 3. The justification stated the following reasons for restricting competition:

A. [WAPA's] current fleet of 4 helicopters is all Bell Helicopters.
B. [WAPA's] inventory of parts and accessories are for Bell Helicopters.
C. [WAPA] owned specialized equipment, such as an Inframetrics IR [infrared] Camera System exclusively used for transmission line and substation IR inspections and a Hazard Marking Sphere and Anti-Spin devices were designed specifically for a Bell Helicopter.
D. [WAPA's] pilot staff is trained only on Bell Helicopters. Standardization is essential because [WAPA's] pilots rotate to different locations as relief pilots. Some of [WAPA's] pilots have never been qualified in a helicopter other than Bell.
E. [WAPA's] pilots would have to be trained at two different flight training facilities and [WAPA's] Instructor Pilot would have to give [WAPA] pilots twice as many Competency Check Flights if a different make and model helicopter were operated by [WAPA].
F. Costs related to pilot training, currency and travel would double.
G. [WAPA] would have to seek and contract to another manufacturer's service center for maintenance requirements.
H. [WAPA's] computerized pilot training program is for Bell Helicopters only.
I. [WAPA's] Flight Operations Manual, Helicopter External Load Manual and Pilot Training Manuals would have to be completely re-written to accommodate any other make of helicopter.

Id. at 1.

WAPA issued the RFQ for one Bell Helicopter model 407. Prior to the closing date for receipt of quotations, AEC protested to our Office. WAPA received multiple quotes to supply the Bell Helicopter model 407 in response to its solicitation. Award has been stayed pending our decision in this protest.

AEC complains that WAPA's restriction of this procurement to a brand name model violates the full and open competition requirements of the Competition in Contracting Act of 1984. In this regard, AEC states that its model AS350B3 helicopter will meet all of the agency's needs.

At the outset, we disagree with the protester that WAPA was required to solicit full and open competition in conducting this procurement. As noted above, the RFQ was issued pursuant to FAR subpart 13.5, which

allows simplified acquisition procedures for the acquisition of commercial items less than $5 million. 41 U.S.C. § 253(g)(1)(B) (Supp. III 1997). Procurements conducted under simplified acquisition procedures are specifically exempt from the statutory requirement to obtain full and open competition; instead, contracting officers are required to promote competition to the maximum extent practicable. 41 U.S.C. § 253(g)(4) (1994); FAR §§ 13.104, 13.501(a).

Accordingly, the issue here is whether the agency in preparing the RFQ specified its needs and solicited quotes in a manner designed to obtain competition to the maximum extent practicable and included restrictive provisions only to the extent necessary to satisfy the agency's needs. In reviewing a challenge to the agency's determination of its needs, we defer to the contracting agency, which is most familiar with its needs and how best to fulfill them, and we will question that determination only where it is shown to have no reasonable basis. Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389 at 5. In this regard, restricting a procurement to a particular manufacturer's product is not improper where the agency establishes that the restriction is necessary to satisfy its needs. See Lenderking Metal Prods., B-252035, B-252036, May 18, 1993, 93-1 CPD ¶ 393 at 2; Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634 at 3.

Here, we find no basis to question WAPA's determination that AEC's helicopter could not satisfy all of the agency's particular needs. Specifically, we find that the helicopter that AEC states it would propose cannot at this time perform WAPA's hazard marking ball placement work. We also find reasonable the agency's concerns with the safe integration of the AEC helicopter into WAPA's fleet considering the agency's specific circumstances. [6]

First, regarding the hazard marking balls, WAPA's director of aviation testified that placement of the marking balls requires the use of a specialized device, manufactured by ExactAir Manufacturing, Inc., which is suspended from the Helicopter. VT at 9:54-55, 10:02, 12:21, 12:49; see Hearing exh. 5-8 (various photographs of placement of marker balls). As of the date of this decision, the placement device has been designed, and received certification from the Federal Aviation Administration (FAA), only for the Bell Helicopter model 206 and McDonnell Douglas Helicopter model 500 series of helicopters. [7] VT at 11:57, 13:31; Hearing exh. 12, Electronic Mail Message from ExactAir to AEC (Nov. 8, 1999). The device has not been designed, or certified by FAA, for use on the helicopter that AEC would propose. VT at 12:49-50. In addition, the record establishes that, even assuming that the ExactAir device could be fitted to the AEC model AS350B3, obtaining FAA's approval would likely take a substantial period of time. [8] VT at 13:37, 14:39-40.

Also, the record otherwise establishes the unsuitability of the AS350B3 aircraft for the specialized, marking ball placement work. Placement of the marking balls requires the pilot to hover close to the power lines and lower the marking ball onto a narrow static cable. This is extremely difficult work, requiring very precise control of the aircraft. VT at 9:56-57. Because the marking ball device is suspended below and behind the pilot, the pilot is required to lean outside the helicopter to watch the placement of the ball. VT at 9:57, 11:06. This is possible in the Bell Helicopter models 206 and 407 because the pilot's seat (which is located on the right hand-side of the aircraft in both the Bell Helicopter models 206 and 407 and the AEC model AS250B3) is only 3 to 4 inches from the edge of the airframe. VT at 11:02-04; Agency's Post-Hearing Comments at 12. The seat on the AS350B3, however, is further (WAPA states nearly 12 inches) from the edge of the airframe, which WAPA's director of aviation stated would make it extremely difficult for the pilot to lean outside of the aircraft while hovering above the power lines. [9] VT at 11:03, 13:35, 15:50-51; Agency's Post-Hearing Comments at 12.

The record also supports the reasonableness of the agency's safety concerns, given the nature of the

agency's flight missions and its organization. [10] After the acquisition of the helicopter solicited here and the exchange of the two Jet Rangers, WAPA will operate three helicopters, which will be based in Phoenix, Arizona; Loveland, Colorado; and Huron, South Dakota. VT at 9:33, 9:43. A pilot will be stationed at each location. Within WAPA's aviation organization each pilot serves as a back-up pilot for the others. [11] VT at 12:16. When a pilot is backing-up another base location, that pilot travels to the other station and flies the helicopter based at that location. Id.

As described above, some of WAPA's aviation mission can be difficult and dangerous. WAPA's director of aviation testified that familiarity with a particular helicopter's controls and operation reduces risks associated with the agency's aviation missions. VT at 11:10, 11:12, 11:24. In this regard, all of WAPA's current helicopters are Bell Helicopter model 206 series aircraft, and all of WAPA's pilots are trained on Bell Helicopters. VT at 9:46. Obtaining a Bell Helicopter with nearly the same instrument and control configuration as the other helicopters in its fleet increases the safety of WAPA's aviation operations, considering the small size of WAPA's fleet and pilot staff and considering that each pilot is a back-up to the others and would be required to fly each other's aircraft. [12] Although the record also indicates, as was acknowledged by WAPA's director of aviation, that the AEC AS350B3 is a "fine" helicopter, pilots would require training and experience (flying time) to become proficient in the AS350B3 for missions flown by WAPA. VT at 12:09, 12:26, 15:47. This is particularly true here because the rotors on the Bell Helicopter models 206 and 407 and on the AEC AS350B3 turn in opposite directions, which results in the airframe being subject to torque in different directions for the respective aircraft. VT at 13:07-09, 15:22-23, 15:25, 15:27-28. Although the parties disagree about the degree of difficulty this difference in flight characteristics would present, this is another aspect of the protester's helicopter that would require adjustment on the part of WAPA's pilots. We conclude that, given WAPA's aviation organization, back-up pilots would have little time in the AS350B3, and that this reasonably would present safety concerns when back-up pilots are required to fly this aircraft in some of the unique missions flown by the agency.

The protest is denied.

Comptroller General
of the United States

Notes

1. WAPA's service area covers Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah and Wyoming. WAPA's Internet Homepage, www.wapa.gov.

2. A hearing was conducted to receive testimony from WAPA's director of aviation and AEC's director of marketing support, both of whom are experienced helicopter pilots.

3. WAPA had another Bell Helicopter model 206 Long Ranger that crashed and was decommissioned in 1997.

4. One pilot will shortly retire. VT at 9:43.

5. Although all of its Bell Helicopter model 206 aircraft have essentially the same controls and flight characteristics, the Jet Rangers have less power than the Long Rangers and cannot perform all of the agency's mission requirements. VT at 10:23, 10:25.

6. We find the remainder of the bases relied upon by the agency in its limited-competition justification to

be unsupported, unpersuasive and/or insufficient to support the limit on competition. For example, although the agency expressed concern with costs associated with pilot training, there was no effort to quantify these costs to determine whether in fact this was or should be a significant concern. VT at 12:03, 12:37, 12:44-45, 13:20; see Sperry Marine, Inc., B-245654, Jan. 27, 1992, 92-1 CPD ¶ 111 at 5-7. Similarly, the statement that the Inframetrics IR camera system could be used only with Bell Helicopter models is not supported by the record, which indicates that this camera system could be used with the protester's helicopter. VT at 11:58.

7. The ExactAir device has not yet been approved for the Bell Helicopter model 407, but the record indicates that obtaining this approval will not be difficult given that the airframe and external load hooks of Bell Helicopter models 206 and 407 are identical. VT at 13:32-33.

8. During the hearing, AEC suggested that there may be available a similar device used by a French electrical power company that could work with the AEC AS350B3 aircraft. VT at 14:38. The protester, however, provided virtually no evidence to establish the suitability of this device for WAPA's needs; nor does the fact that a placement device is available in France on a similar AEC model helicopter demonstrate that the ExactAir device can necessarily be fitted to, and certified on, the AEC AS350B3 helicopter.

9. Another hazardous maintenance task for which WAPA uses helicopters is "slinging-in" loads of equipment and supplies for construction crews in remote areas. This also requires that the load be suspended below the aircraft and that pilots hover above high-voltage power lines to deliver the load. Agency's Post-Hearing Comments at 7.

10. It is true, as noted by AEC, that WAPA's limited-competition justification does not specifically state that standardization of WAPA's helicopter fleet was a safety concern. We find this implicit in the justification, however.

11. WAPA's director of aviation, who is stationed in Golden, Colorado, is also the agency's chief pilot instructor, director of aviation maintenance, and back-up pilot to the other WAPA pilots.

12. The record indicates that Bell Helicopter models 206 and 407 are substantially the same aircraft, having essentially similar flight characteristics. VT at 12:58, 13:10. In addition, the instruments and control of the Bell Helicopter model 407 are very similar to those of the Bell Helicopter model 206. VT at 10:29-30, 10:31-32, 10:36. The arrangement of the instrument cluster of the AEC AS350B3 differs from the Bell Helicopter model 206, as does the location of control switches. VT at 10:56. In the Bell Helicopter model 206 and 407, the control switches are clustered above the pilot's left shoulder, VT at 10:35-36, while in the AEC AS350B3, the control switches are clustered next to the pilot's left knee. VT at 10:55.